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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

Conservatorship of the Person of
T.R.,

CONTRA COSTA PUBLIC
GUARDIAN,

Petitioner and Respondent,

v.

T.R.,

Objector and Appellant.

A157855

(Contra Costa County
Super. Ct. No. P1701661)

T.R. appeals from an order requiring her to pay for services provided by her conservator and county counsel. She contends the petition seeking compensation did not comply with the applicable rules and the order was not supported by substantial evidence. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

The Public Guardian of Contra Costa County (Public Guardian) was appointed conservator of T.R. on January 10, 2018, pursuant to the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5350 et seq.). Letters of Conservatorship were filed on January 24, 2018.

On December 17, 2018, the Public Guardian filed a petition for reappointment as T.R.'s conservator pursuant to Welfare and Institutions Code sections 5361 and 5362, supported by the declarations of two physicians who opined that T.R. remained gravely disabled.

On January 8, 2019, the Public Guardian requested that the petition for reappointment be vacated and dismissed. The court terminated the conservatorship without prejudice in an order filed on January 15, 2019.¹

On May 29, 2019, the Public Guardian, through county counsel, filed a Petition for Compensation pursuant to Probate Code sections 2641 and 2642, seeking compensation for the Public Guardian and county counsel. The petition was signed by a deputy county counsel (Steven Rettig) and a deputy conservator (name illegible); it was verified solely by the deputy conservator. (See Cal. Rules of Court, rule 7.103(b) [verification by one party is sufficient].)

As to the Public Guardian, the petition requested \$1,022.19 as “just and reasonable compensation for services for the period of January 10, 2018

¹ The court had appointed the “Contra Costa Public Guardian” as the conservator. The Letters of Conservatorship identified the conservator as the Contra Costa County Health Services Department. That agency filed the petition for reappointment, but it requested that the “Contra Costa County Public Guardian be reappointed.” The citation for the reappointment referenced the reappointment of “Anna M. Roth, Director, of the Health Services Department of Contra Costa County.” These titles for the conservator appear to be used interchangeably, and our reference to “Public Guardian” is a reference to whichever entity is appropriate.

through January 8, 2019,” during T.R.’s conservatorship. Attached to the petition as Exhibit B (there was no Exhibit A) was a list of the Public Guardian’s “typical services,” which included tasks such as “[c]ollateral conversations,” conversations with a conservatee’s family and physician, visits with a conservatee, telephone conversations with a conservatee, telephone conversations about billing matters, completion of benefits application packets, hospital placements, community placements, and other services. The petition did not state what tasks were actually performed for T.R., how much time was spent on any task, or an hourly rate.

As to county counsel, the petition requested \$365 as “[t]he reasonable value of all legal services rendered.” Paragraph 3 of the petition asserted that Sharon L. Anderson, county counsel, “rendered and performed legal services as attorney for petitioner including, but not limited to, preparing all necessary documents, making court appearance [sic], and giving legal advice to petitioner as requested.” It did not state the amount of time spent or an hourly rate.

At a hearing on June 18, 2019, T.R. appeared and objected to the petition. T.R.’s attorney, Deputy Public Defender Jeffrey Landau, requested a continuance to investigate T.R.’s objection. The court continued the matter to July 2, 2019.

T.R. did not appear at the July 2, 2019 hearing, but Landau was present and confirmed that T.R. objected to the petition, without elaborating. The court immediately overruled the objection and granted the petition. There was no other discussion of the petition or the objection on the record. This appeal followed.

II. DISCUSSION

T.R. argues that the petition for compensation did not comply with the requirements of Probate Code section 2640 and rule 7.751 of the California Rules of Court.² On that basis, she contends there was no substantial evidence to support the trial court's order and the court "grossly abused" its discretion. We address issues of waiver and the merits.

A. Waiver

Although T.R. objected to the petition, neither she nor her attorney stated any basis for the objection. The Public Guardian urges that T.R. thereby waived any right to challenge the order on appeal. T.R. contends the petition's failure to comply with the statute and rules was so clear and extreme that the general objection was sufficient, and if it was not sufficient, her public defender provided ineffective assistance.

To the extent T.R. is claiming error based on the fact of the Public Guardian's failure to comply with the rules of court—in other words, the form of the petition—we agree the challenge may be waived, since the specific procedural shortcoming was not brought to the trial court's attention. (See *People v. Mattson* (1990) 50 Cal.3d 826, 854 [specificity is required in objecting to the admission of evidence, both to enable the court to make an informed ruling and to enable the party proffering the evidence to cure the defect].) Nonetheless, T.R. certainly did not consent to the compensation sought by the petition, and the failure to interpose a more specific objection does not bar a challenge based on the insufficiency of the evidence. (See *People v. Cuccia* (2002) 97 Cal.App.4th 785, 795 [failure to move for acquittal

² Except where otherwise indicated, all further rule references are to the California Rules of Court.

does not waive substantial evidence review].) We therefore proceed to the merits in regard to the sufficiency of the evidence.³

B. Merits

Probate Code section 2640 authorizes an award of compensation to the conservator and the attorney providing services to the conservator. Subdivision (c) of that section reads: “Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is *just and reasonable* . . . to the guardian or *conservator of the person* for services rendered, . . . and (2) any compensation requested in the petition the court determines is *reasonable* to the *attorney* for services rendered to the guardian or conservator of the person The compensation allowed to the guardian or conservator of the person, . . . and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.” (Italics added.)

³ The Public Guardian also argues that a waiver occurred based on rule 7.801, which states: “If the court continues a matter to allow a written objection or response to be made, and the responding or objecting party fails to serve and file a timely objection or response, the court may deem the objections or responses waived.” Neither T.R. nor Landau filed a written objection or response at the continued hearing on July 2, 2019. But the earlier hearing was not continued for a “*written* objection or response.” (Rule 7.801, italics added.) It was continued for T.R.’s lawyer to investigate T.R.’s objection to the petition. No waiver is established.

Here, the petition represented that the compensation sought for the Public Guardian was “just and reasonable” and the amount sought for county counsel was the “reasonable” value of counsel’s services. T.R. contends these assertions were insufficient, particularly in light of rule 7.751.

Rule 7.751(b) provides: “All petitions for orders fixing and allowing compensation must comply with the requirements of *rule 7.702* concerning petitions for extraordinary compensation in decedents’ estates, to the extent applicable to guardianships and conservatorships, except that the best interest of the ward or conservatee is to be considered instead of the interest of beneficiaries of the estate.” (Italics added.) The Public Guardian does not dispute that rule 7.751(b) applies in this case. (See Rule 7.750 [rules apply to conservatorships under Lanterman-Petris-Short Act].)

Rule 7.702 in turn requires a petition to include or be accompanied by a statement of facts that will “(1) Show the nature and difficulty of the tasks performed; [¶] (2) Show the results achieved; [¶] (3) Show the benefit of the services to the estate; [¶] (4) Specify the amount requested for each category of service performed; [¶] (5) State the hourly rate of each person who performed services and the hours spent by each of them; [¶] (6) Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent; and [¶] (7) State the estimated amount of statutory compensation to be paid by the estate, if the petition is not part of a final account or report.”

There is no dispute that the Public Guardian’s petition did not set forth information mandated by rule 7.702. Rule 7.702(1) required a showing of the nature and difficulty of the tasks performed: in regard to the Public Guardian, the petition merely attached a pro forma list of services the Public Guardian typically performs, without identifying the nature of the services actually performed or anything about the difficulty of the performed tasks; in

regard to county counsel, the petition described services provided by county counsel as “including, but not limited to, preparing all necessary documents, making court appearance [sic], and giving legal advice to petitioner as requested,” without describing the difficulty of those tasks. Moreover, the petition made no effort to describe the results achieved (rule 7.702(2)), the benefit of the services to T.R. (rule 7.702(3)), the “amount requested for each category of service” performed (rule 7.702(4)), the hourly rate for each person who performed services and the hours spent by each of them (rule 7.702(5)), or a description of the services rendered in sufficient detail to demonstrate the productivity of the time spent (rule 7.702(6)).

Due to the omission of the information required by rule 7.702, the petition lacked substantial evidentiary support. As to the compensation requested for the Public Guardian, there was no way to tell that \$1,022.19 was just and reasonable, since there was no specification as to what the Public Guardian actually did for T.R., how long it took, what benefit it provided, how difficult it was, or the rate for those services. Similarly, as to the amount requested for county counsel, there was little way to tell that \$365 was reasonable compensation. The Public Guardian responds by arguing “harmless error,” premised on the supposition that the Public Guardian and county counsel charged the maximum hourly rate allowed under the local rules, so they must have billed for just a small amount of time, which they might well have spent in connection with events depicted elsewhere in the record. But this is pure speculation. Moreover, the Public Guardian’s post-hoc explanation in this court is no substitute for presenting information to the trial court along with the petition.⁴

⁴ We also note that Rule 7.756(a), not discussed by the parties, sets forth nonexclusive factors the court may consider in determining just and

If we were to proceed no further in our analysis, we might conclude that the paucity of supporting evidence compels us to reverse the order and remand the matter for additional proceedings. But both parties to this appeal have overlooked the procedure set forth under the probate court's local rules for exactly this type of situation. (See Super. Ct. Contra Costa County, Local Rules (Local Rules).) We therefore turn to those rules.

Local Rule 7.426, entitled "Conservator and Guardian Compensation and Attorney's Fees," reads: "Petitions for compensation of guardians and conservators and their attorneys *shall be supported by a declaration, complying with Contra Costa Probate Court Guideline Attachment #2* from each individual requesting approval of fees. . . . The court prefers that the *petition itself recite only the amounts claimed and the relevant period of time, referring to the accompanying declaration(s), which should contain the explanation and justification.* See also California Rules of Court, Rules 7.751(b) and 7.756 for declaration content." (Local Rule 7.426(a), italics added.)

Probate Court Guideline Attachment #2, entitled "Probate Department Fees and Costs Guidelines," was established by the Probate Department for "allowable fees and costs in probate, trust, guardianship and conservatorship proceedings." Subdivisions (a) and (b) set the standard maximum attorney's fee for conservatorships at \$400 per hour and the standard maximum hourly rate for professional fiduciaries at \$150. Subdivision (f)(1) provides that fee requests, as relevant here, "shall include a narrative description of the types

reasonable compensation, such as the necessity and benefit of the services to the conservatee, the time spent, whether the skills were routine, the conservator's estimate of the value of the services, and the "compensation customarily allowed by the court in the community where the court is located."

of services performed, including the number of hours and the rates requested for each type, distinguishing between hours and rates for each person performing each type of service.” However, subdivision (f)(4) states:

“Notwithstanding the foregoing, the Court will ordinarily approve an annual fiduciary fee of up to \$1,500.00 for non-professional fiduciaries, and up to \$3,000.00 for professional fiduciaries, without requiring a declaration.”
(Italics added.)

Reading Local Rule 7.426 and the Guideline together, a compensation petition need only identify the amount sought and the relevant period of time, and although detailed information is typically required in an accompanying declaration, the court will “ordinarily” approve a compensation request under specified amounts even without a declaration. Thus, parties are on notice that when the compensation request is for a relatively low amount, as here, supporting information may not be provided or required, and the conservatee should alert the court to any information indicating the request should not be approved as it ordinarily would.

Here, the Public Guardian’s petition complied with Local Rule 7.426 and the Guideline by stating the total amount requested and the period covered—roughly one year—and further represented that the amount for the conservator was “fair and reasonable” and the amount for county counsel was “reasonable.” T.R. did not submit any evidence or argument to cast doubt on the propriety of the compensation. Even now on appeal, T.R. does not point to anything in the record compelling the conclusion that the requested compensation was unreasonable, urging instead that there is no way to know whether it was reasonable or not. In short, the probate court was faced with the type of petition it would ordinarily approve, and T.R. does not establish the court abused its discretion in doing so.

Because the probate court was authorized by local rule to grant the compensation request without a supporting declaration, it would be inappropriate to reverse the approval due to a lack of substantial evidence that would have been included in such a declaration. The Public Guardian and the court did what they were allowed to do, and T.R. fails to demonstrate error.⁵

III. DISPOSITION

The order is affirmed.

⁵ The parties had an opportunity to brief the local rules and Guideline that govern the compensation request at issue in this appeal. Indeed, the Public Guardian referenced the local rules' Guideline in its respondent's brief, and T.R. discussed the Guideline in her reply brief. Although we provide an opportunity for additional briefing if our decision is going to be "based upon an issue which was not proposed or briefed by any party to the proceeding" (Govt. Code, § 68081), that requirement does not apply where the issue on which we base our decision can be considered "fairly included" within the issues the parties presented. (*People v. Alice* (2007) 41 Cal.4th 668, 677–679.) Here, the issue of local rule requirements, which govern the evidence needed to support compensation requests, is fairly included within the issue of whether enough evidence supported the compensation request. We also note that T.R. has not contended that the local rules and Guideline are inapplicable or unenforceable. (See Rules 3.10, 3.20 [civil rules of court apply in probate proceedings but do not preempt local rules]; Rule 7.4 [the court for good cause may waive the application of the probate rules of court in an individual case].) We do not decide this issue.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BURNS, J.

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